

ORIGINAL

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 LES JANKEY  
 and DISABILITY RIGHTS  
 ENFORCEMENT, EDUCATION,  
 SERVICES: HELPING YOU  
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 RICHARD W. WIEKING  
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 NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

PJH

LES JANKEY, an individual; and  
 DISABILITY RIGHTS, ENFORCEMENT,  
 EDUCATION, SERVICES:HELPING YOU  
 HELP OTHERS, a California public benefit  
 corporation,

Plaintiffs,

v.

GEARY PARKWAY MOTEL; HENRY  
 KAO-CHUN YANG TRUSTEE of the  
 CHUNG LANG YANG IRREVOCABLE  
 TRUST; BAL WANTSINH D. THAKOR,  
 and KIRANSHINH B. THAKOR,  
 individuals dba GEARY PARKWAY  
 MOTEL,

Defendants.

CASE NO.  
 Civil Rights  
 08

2466

**COMPLAINT FOR INJUNCTIVE RELIEF  
 AND DAMAGES:**

**1<sup>st</sup> CAUSE OF ACTION:** For Denial of Access  
 by a Public Accommodation in Violation of the  
 Americans with Disabilities Act of 1990 (42  
 U.S.C. §12101, *et seq.*)

**2<sup>nd</sup> CAUSE OF ACTION:** For Denial of Full  
 and Equal Access in Violation of California  
 Civil Code §§54, 54.1 and 54.3

**3<sup>rd</sup> CAUSE OF ACTION:** For Denial of  
 Accessible Sanitary Facilities in Violation of  
 California Health & Safety Code §19955, *et seq.*

**4<sup>th</sup> CAUSE OF ACTION:** For Denial of  
 Access to Full and Equal Accommodations,  
 Advantages, Facilities, Privileges and/or  
 Services in Violation of California Civil Code  
 §51, *et seq.* (The Unruh Civil Rights Act)

**DEMAND FOR JURY**

1 Plaintiffs LES JANKEY, an individual; and DISABILITY RIGHTS, ENFORCEMENT,  
2 EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a California public benefit  
3 corporation (hereinafter sometimes referred to as "DREES"), complain of defendants HENRY  
4 KAO-CHUN YANG TRUSTEE of the CHUNG LANG YANG IRREVOCABLE TRUST;  
5 BALWANTSINH D. THAKOT, and KIRANSHINH B. THAKOR, individuals dba GEARY  
6 PARKWAY MOTEL and allege as follows:

7 **INTRODUCTION:**

8 1. This is a civil rights action for discrimination against persons with physical  
9 disabilities, of which class plaintiff LES JANKEY and the membership of DREES are members,  
10 for failure to remove architectural barriers structural in nature at defendants' GEARY  
11 PARKWAY MOTEL, a place of public accommodation, thereby discriminatorily denying  
12 plaintiffs and the class of other similarly situated persons with physical disabilities access to, the  
13 full and equal enjoyment of, opportunity to participate in, and benefit from, the goods, facilities,  
14 services, and accommodations thereof. Plaintiffs seek injunctive relief and damages pursuant to  
15 the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.*; California Civil Code  
16 §§51, 51.5 and 54, *et seq.*; and California Health & Safety Code §19955, *et seq.*

17 2. Plaintiff LES JANKEY is a person with physical disabilities who, on or about  
18 March 15, 2008, March 16, 2008, March 17, 2008, March 19, 2008, March 26, 2008, April 16,  
19 2008 and April 17, 2008, was an invitee, guest, patron, customer at defendants' GEARY  
20 PARKWAY MOTEL, in the City of San Francisco, California. At said time and place,  
21 defendants failed to provide proper legal access to the motel, which is a "public accommodation"  
22 and/or a "public facility" including, but not limited to signage, parking and guest rooms. The  
23 denial of access was in violation of both federal and California legal requirements, and plaintiff  
24 LES JANKEY suffered violation of his civil rights to full and equal access, and was embarrassed  
25 and humiliated.

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**JURISDICTION AND VENUE:**

3. **Jurisdiction:** This Court has jurisdiction of this action pursuant to 28 U.S.C. §1331 for violations of the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.* Pursuant to pendant jurisdiction, attendant and related causes of action, arising from the same nucleus of operative facts and arising out of the same transactions, are also brought under parallel California law, whose goals are closely tied with the ADA, including but not limited to violations of California Civil Code §51, *et seq.* and §54, *et seq.*, California Health & Safety Code §19955 *et seq.*, including §19959; Title 24 California Building Standards Code.

4. **Venue:** Venue is proper in this court pursuant to 28 U.S.C. §1391(b) and is founded on the facts that the real property which is the subject of this action is located at/near 4750 Geary Boulevard, in the City and County of San Francisco, State of California, and that plaintiffs' causes of action arose in this county.

**PARTIES:**

5. Plaintiff LES JANKEY is a "physically handicapped person", a "physically disabled person", and a "person with physical disabilities" (hereinafter the terms "physically disabled", "physically handicapped" and "person with physical disabilities" are used interchangeably, as these words have similar or identical common usage and legal meaning, but the legislative scheme in Part 5.5 of the Health & Safety Code uses the term "physically handicapped persons" and the Unruh Civil Rights Act, §§51, 51.5, 54, 54.1 and 55, and other statutory measures refer to protection of the rights of "physically disabled persons"). Plaintiff LES JANKEY is a "person with physical disabilities", as defined by all applicable California and United States laws. Plaintiff has a congenital deformity of both lower extremities. Plaintiff LES JANKEY requires the use of a wheelchair to travel about in public. Consequently, plaintiff LES JANKEY is a member of that portion of the public whose rights are protected by the provisions of Health & Safety Code §19955, *et seq.* (entitled "Access to Public Accommodations by Physically Handicapped Persons") and the protections of the Unruh Civil Rights Act, Civil Code §§51 and 51.5 the Disabled Persons Act, Civil Code §54, and the Americans with Disabilities Act, 42 U.S.C. §12101, *et seq.*

1           6.     Plaintiff DISABILITY RIGHTS, ENFORCEMENT, EDUCATION, SERVICES:  
2     HELPING YOU HELP OTHERS ("DREES") is a nonprofit (501(c)(3)) organization that works  
3     with persons with disabilities to empower them to be independent in American society. DREES  
4     accomplishes its goals and purposes through education on disability issues, enforcement of the  
5     rights of persons with disabilities, and the provision of services to persons with disabilities, the  
6     general public, public agencies and the private business sector. DREES brings this action on  
7     behalf of its members, many of whom are persons with physical disabilities and whom have  
8     standing in their right to bring this action.

9           7.     That members of DREES, like plaintiff LES JANKEY, will or have been guests  
10    and invitees at the subject GEARY PARKWAY MOTEL, and that the interests of plaintiff  
11    DREES in removing architectural barriers at the subject motel advance the purposes of DREES  
12    to assure that all public accommodations, including the subject motel, are accessible to  
13    independent use by mobility-impaired persons. The relief sought by plaintiff DREES as alleged  
14    herein is purely statutory in nature.

15          8.     Defendants HENRY KAO-CHUN YANG TRUSTEE of the CHUNG LANG  
16    YANG IRREVOCABLE TRUST; BALWANTSINH D. THAKOT, and KIRANSHINH B.  
17    THAKOR, individuals dba GEARY PARKWAY MOTEL (hereinafter alternatively collectively  
18    referred to as "defendants") are the owners and operators, lessors and/or lessees, or agents of the  
19    owners, lessors and/or lessees, of the public accommodation known as the GEARY PARKWAY  
20    MOTEL, located at/near 4750 Geary Boulevard, San Francisco, California, or of the building  
21    and/or buildings which constitute said public accommodation.

22          9.     At all times relevant to this complaint, defendants HENRY KAO-CHUN YANG  
23    TRUSTEE of the CHUNG LANG YANG IRREVOCABLE TRUST; BALWANTSINH D.  
24    THAKOT, and KIRANSHINH B. THAKOR, individuals dba GEARY PARKWAY MOTEL,  
25    own and operate in joint venture the subject GEARY PARKWAY MOTEL as a public  
26    accommodation. This business is open to the general public and conducts business therein. The  
27    business is a "public accommodation" or "public facility" subject to the requirements of  
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1 California Civil Code §§51, 51.5 and 54, *et seq.*, Health and Safety code §19955, *et seq.*, and the  
2 ADA, 42 U.S.C. §12101, *et seq.*

3 10. At all times relevant to this complaint, defendants HENRY KAO-CHUN YANG  
4 TRUSTEE of the CHUNG LANG YANG IRREVOCABLE TRUST; BALWANTSINH D.  
5 THAKOT, and KIRANSHINH B. THAKOR, individuals dba GEARY PARKWAY MOTEL are  
6 jointly and severally responsible to identify and remove architectural barriers at the subject motel  
7 pursuant to Code of Federal Regulations title 28, section 36.201(b), which states in pertinent  
8 part:

9 **§ 36.201 General**

10 (b) *Landlord and tenant responsibilities.* Both the landlord  
11 who owns the building that houses a place of public  
12 accommodation and the tenant who owns or operates the place of  
13 public accommodation are public accommodations subject to the  
14 requirements of this part. As between the parties, allocation of  
15 responsibility for complying with the obligations of this part may  
16 be determined by lease or other contract.

17 28 CFR §36.201(b)

18 **PRELIMINARY FACTUAL ALLEGATIONS:**

19 11. The GEARY PARKWAY MOTEL, is a motel, located at/near 4750 Geary  
20 Boulevard, San Francisco, California. The GEARY PARKWAY MOTEL, its signage, parking,  
21 guest rooms, and its other facilities are each a “place of public accommodation or facility”  
22 subject to the barrier removal requirements of the Americans with Disabilities Act. On  
23 information and belief, each such facility has, since July 1, 1970, undergone “alterations,  
24 structural repairs and additions”, each of which has subjected the GEARY PARKWAY MOTEL  
25 and each of its facilities, its signage, parking and guest rooms to disability access requirements  
26 per the Americans with Disabilities Act Accessibility Guidelines (ADAAG), and Title 24 of the  
27 California Code of regulations (Title 24).

28 12. At all times stated herein, plaintiff LES JANKEY was a member of DREES.

13. At all times referred to herein and continuing to the present time, defendants, and  
each of them, advertised, publicized and held out the GEARY PARKWAY MOTEL as being  
handicapped accessible and handicapped usable.

1           14.     On or about March 15, 2008, March 16, 2008, March 17, 2008, March 19, 2008,  
2     March 26, 2008, April 16, 2008 and April 17, 2008, plaintiff LES JANKEY was an invitee at the  
3     subject GEARY PARKWAY MOTEL, for purposes of renting and staying in a room overnight.

4           15.     On or about Saturday, March 15, 2008, plaintiff LES JANKEY telephoned  
5     Central Reservations for the GEARY PARKWAY MOTEL using their 877 number. This was  
6     for a Monday reservation. Plaintiff LES JANKEY was informed that the GEARY PARKWAY  
7     MOTEL would send him a confirming email within one (1) hour.

8           16.     On or about Sunday, March 16, 2008, plaintiff LES JANKEY telephoned the  
9     GEARY PARKWAY MOTEL. Plaintiff LES JANKEY spoke to a woman. Plaintiff told her he  
10    did not receive a confirming email. Plaintiff LES JANKEY told the lady he needed a handicap  
11    accessible room. The spokesperson for GEARY PARKWAY MOTEL told plaintiff in  
12    substance, "that a handicap accessible room was not available, because the guy staying in it  
13    decided to stay an extra week." Plaintiff LES JANKEY responded in substance, that "a first  
14    floor room that was large might work for him." The response in substance was "we couldn't rent  
15    you a room because you're in a wheelchair and need the accessible room...it wouldn't be right."

16          17.     On or about Monday, March 17, 2008, plaintiff LES JANKEY had his friend  
17    Belinda Pates call the GEARY PARKWAY MOTEL on his behalf to secure a reservation for  
18    March 19, 2008. Belinda Pates was informed by a woman in substance, "that no rooms were  
19    available and that rooms were rented on a first come first serve basis."

20          18.     The motel representative contradicted herself indicating that a reservation could  
21    be made but that a room could not be guaranteed until arrival, but no rooms were available for  
22    Wednesday, April 19, 2008.

23          19.     On or about March 26, 2008, plaintiff LES JANKEY went directly to GEARY  
24    PARKWAY MOTEL to secure a room. It was approximately 4:30 p.m.. Plaintiff LES JANKEY  
25    inquired about an accessible room and was told that none were available. Plaintiff then asked to  
26    see the largest first floor room. Plaintiff LES JANKEY was shown a room with two (2) double  
27    beds. However, one (1) bed blocked access to the bathroom. Plaintiff LES JANKEY told the  
28    employee that the room would probably work but that the bed needed to be moved a little.

1 Plaintiff LES JANKEY attempted to move the bed while in his wheelchair and asked the male  
2 employee to help him. The male employee refused. Plaintiff LES JANKEY then left.

3 20. On or about April 11, 2008, plaintiff LES JANKEY made a reservation at  
4 GEARY PARKWAY MOTEL.

5 21. On or about April 16 and 17, 2008, plaintiff LES JANKEY rented room number  
6 102 at the GEARY PARKWAY MOTEL not only to stay in the city, but to determine if the room  
7 was large enough to be made accessible. With great difficulty, plaintiff LES JANKEY while  
8 stressing and straining himself was able to use the toilet.

9 22. At said time and place, plaintiff LES JANKEY saw that adjacent to the bathroom  
10 was a very large closet space that could be used to create a handicap bathroom.

11 23. On or about April 16, 2008, plaintiff LES JANKEY attempted to use the shower.  
12 Because the shower had an approximately four (4) inch shower pan, plaintiff LES JANKEY  
13 could not roll into the shower. Plaintiff needed a shower chair to transfer. Plaintiff LES  
14 JANKEY contacted a male employee at the registration counter and asked for a shower chair,  
15 stool, five gallon bucket, trash can or anything he could transfer onto. Plaintiff LES JANKEY  
16 asked this (multiple times). The man replied: "we're limited." Plaintiff LES JANKEY also  
17 asked for a mirror to shave and was told by this man in substance that one was not available.  
18 Plaintiff LES JANKEY then saw a workman and the workman brought him a four legged low  
19 saw horse that had approximately a one (1) foot wide top. Plaintiff used this to transfer onto with  
20 great difficulty.

21 24. On or about April 17, 2008, plaintiff LES JANKEY once again asked the fellow  
22 at the registration counter for a small mirror with which to shave. Again, the man did not  
23 provide a usable mirror.

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1           25.     Therefore, at said time(s) and place, plaintiff LES JANKEY, a person with a  
 2 disability, encountered the following inaccessible elements of the subject GEARY PARKWAY  
 3 MOTEL which constituted architectural barriers and a denial of the proper and legally-required  
 4 access to a public accommodation to persons with physical disabilities including, but not limited  
 5 to:

- 6           a.     lack of directional signage to show accessible routes of travel, i.e.,  
 7 entrances;
- 8           b.     lack of the requisite number of regular disabled parking stall(s);
- 9           c.     lack of disabled van accessible parking stall(s);
- 10          d.     lack of handicapped accessible guest room with two beds and bathroom  
 11 within;
- 12          e.     lack of the requisite number of accessible guest rooms by classification;
- 13          f.     on personal knowledge, information and belief, other public facilities and  
 14 elements too numerous to list were improperly inaccessible for use by  
 15 persons with physical disabilities;
- 16          g.     lack of a reservation policy, practice and procedure to "hold" disabled  
 17 guest rooms for persons with disabilities before selling said rooms to the  
 18 general public; and
- 19          h.     Plaintiff is informed and believes defendants lack a policy, practice and  
 20 procedure of having available guest rooms for persons with disabilities.  
 21 (Plaintiff seeks the implementation of a policy, practice and procedure that  
 22 handicapped accessible guest rooms will not be sold unless specifically  
 23 requested or until all other rooms are sold to the general public to ensure  
 24 the availability of guest rooms to persons with disabilities.

25           26.     At all times stated herein, the existence of architectural barriers at defendants'  
 26 place of public accommodation evidenced "actual notice" of defendants' intent not to comply  
 27 with the Americans with Disabilities Act of 1990 either then, now or in the future.

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1       27. As a legal result of defendants HENRY KAO-CHUN YANG TRUSTEE of the  
2 CHUNG LANG YANG IRREVOCABLE TRUST; BALWANTSINH D. THAKOT, and  
3 KIRANSHINH B. THAKOR, individuals dba GEARY PARKWAY MOTEL's failure to act as a  
4 reasonable and prudent public accommodation in identifying, removing or creating architectural  
5 barriers, policies, practices and procedures that denied access to plaintiffs and other persons with  
6 disabilities, plaintiffs suffered the damages as alleged herein.

7       28. As a legal result of defendants' actions or omissions as stated herein and  
8 defendants' denial of access to plaintiff to all or part of the facilities constituting the public  
9 accommodations which comprise the GEARY PARKWAY MOTEL, plaintiff was wrongfully  
10 evicted and/or rejected by defendants, and each of them.

11       29. As a further legal result of the actions and failure to act of defendants, and as a  
12 legal result of the failure to provide proper handicapped-accessible public facilities as set forth  
13 herein, plaintiffs were denied their civil rights to full and equal access to public facilities. Plaintiff  
14 LES JANKEY suffered a loss of his civil rights and his rights as a person with physical  
15 disabilities to full and equal access to public facilities.

16       30. Further, plaintiff LES JANKEY suffered emotional distress, mental distress,  
17 mental suffering, mental anguish, which includes, but is not limited to, shame, humiliation,  
18 embarrassment, anger, disappointment and worry, expectedly and naturally associated with a  
19 person with physical disabilities being denied access, all to his damages as prayed hereinafter in  
20 an amount within the jurisdiction of this court. No claim is being made for mental and emotional  
21 distress over and above that usually associated with the discrimination and physical injuries  
22 claimed, and no expert testimony regarding this usual mental and emotional distress will be  
23 presented at trial in support of the claim for damages.

24       31. Plaintiff LES JANKEY and the membership of DREES were denied their rights to  
25 equal access to a public facility by defendants HENRY KAO-CHUN YANG TRUSTEE of the  
26 CHUNG LANG YANG IRREVOCABLE TRUST; BALWANTSINH D. THAKOT, and  
27 KIRANSHINH B. THAKOR, individuals dba GEARY PARKWAY MOTEL, because defendants  
28 HENRY KAO-CHUN YANG TRUSTEE of the CHUNG LANG YANG IRREVOCABLE

1 TRUST; BALWANTSINH D. THAKOT, and KIRANSHINH B. THAKOR, individuals dba  
2 GEARY PARKWAY MOTEL maintained a motel without access for persons with physical  
3 disabilities to its facilities, including but not limited to signage, parking, guest rooms, and other  
4 public areas as stated herein, and continue to the date of filing this complaint to deny equal access  
5 to plaintiffs and other persons with physical disabilities in these and other ways.

6 32. On information and belief, construction alterations carried out by defendants have  
7 also triggered access requirements under both California law and the Americans with Disabilities  
8 Act of 1990.

9 33. Plaintiffs, as described hereinbelow, seek injunctive relief to require the GEARY  
10 PARKWAY MOTEL to be made accessible to meet the requirements of both California law and  
11 the Americans with Disabilities Act of 1990, whichever is more restrictive, so long as defendants  
12 operate the GEARY PARKWAY MOTEL as a public facility.

13 34. Plaintiffs seek damages for violation of their civil rights on March 15, 2008,  
14 March 16, 2008, March 17, 2008, March 19, 2008, March 26, 2008, April 16, 2008 and April 17,  
15 2008 and they seek statutory damages of not less than \$4,000, pursuant to Civil Code §52(a) or  
16 alternatively \$1000 pursuant to Civil Code §54.3, for each day after his/her visit that the trier of  
17 fact (court/jury) determines was the date that some or all remedial work should have been  
18 completed under the standard that the landlord and tenant had an ongoing duty to identify and  
19 remove architectural barriers where it was readily achievable to do so, which deterred plaintiff  
20 LES JANKEY from returning to the subject public accommodation because of his knowledge  
21 and/or belief that neither some or all architectural barriers had been removed and that said  
22 premises remains inaccessible to persons with disabilities whether a wheelchair user or otherwise.

23 35. On information and belief, defendants have been negligent in their affirmative duty  
24 to identify the architectural barriers complained of herein and negligent in the removal of some or  
25 all of said barriers.

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1        36. Because of defendants' violations, plaintiffs and other persons with physical  
2 disabilities are unable to use public facilities such as those owned and operated by defendants on a  
3 "full and equal" basis unless such facility is in compliance with the provisions of the Americans  
4 with Disabilities Act of 1990, Civil Code §54.1 and Health & Safety Code §19955, *et seq.* and  
5 other accessibility law as plead herein. Plaintiffs seek an order from this court compelling  
6 defendants to make the motel accessible to persons with disabilities.

7        37. On information and belief, defendants have intentionally undertaken to modify and  
8 alter existing building(s), and have failed to make them comply with accessibility requirements  
9 under the requirements of ADAAG and Title 24. The acts and omission of defendants, and each  
10 of them, in failing to provide the required accessible public facilities at the time of plaintiff's visit  
11 and injuries, indicate actual and implied malice toward plaintiffs, and despicable conduct carried  
12 out by defendants, and each of them, with a willful and conscious disregard for the rights and  
13 safety of plaintiffs and other similarly situated persons, and justify a trebling of damages as  
14 provided by Civil Code §§52(a) and 54.3, in order to make a more profound example of  
15 defendants, and each of them, to other operators of other motels and other public facilities, and to  
16 punish defendants and to carry out the purposes of the Civil Code §§ 51, 51.5 and 54.

17        38. Plaintiffs are informed and believe and therefore allege that defendants HENRY  
18 KAO-CHUN YANG TRUSTEE of the CHUNG LANG YANG IRREVOCABLE TRUST;  
19 BALWANTSINH D. THAKOT, and KIRANSHINH B. THAKOR, individuals dba GEARY  
20 PARKWAY MOTEL, and each of them, caused the subject building(s) which constitute the  
21 GEARY PARKWAY MOTEL to be constructed, altered and maintained in such a manner that  
22 persons with physical disabilities were denied full and equal access to, within and throughout said  
23 building(s) of the motel and were denied full and equal use of said public facilities. Furthermore,  
24 on information and belief, defendants have continued to maintain and operate said motel and/or its  
25 building(s) in such conditions up to the present time, despite actual and constructive notice to  
26 such defendants that the configuration of motel and/or its building(s) is in violation of the civil  
27 rights of persons with physical disabilities, such as plaintiff LES JANKEY, the membership of  
28 plaintiff DREES and the disability community which DREES serves. Such construction,



1 modification, ownership, operation, maintenance and practices of such public facilities are in  
2 violation of Civil Code §§51, 51.5 and 54, Health and Safety Code §19955, and the ADA, 42  
3 U.S.C. §12101, *et seq.*

4 39. On personal knowledge, information and belief, the basis of defendants' actual and  
5 constructive notice that the physical configuration of the facilities including, but not limited to,  
6 architectural barriers constituting the GEARY PARKWAY MOTEL and/or building(s) was in  
7 violation of the civil rights of persons with physical disabilities, such as plaintiffs, includes, but is  
8 not limited to, communications with invitees and guests, owners of other restaurants, hotels,  
9 motels and businesses, notices they obtained from governmental agencies upon modification,  
10 improvement, or substantial repair of the subject premises and other properties owned by these  
11 defendants, newspaper articles and trade publications regarding the Americans with Disabilities  
12 Act of 1990 and other access laws, public service announcements by former U.S. Attorney  
13 General Janet Reno between 1993 and 2000, and other similar information. Defendants' failure,  
14 under state and federal law, to make the motel accessible is further evidence of defendants'  
15 conscious disregard for the rights of plaintiff and other similarly situated persons with disabilities.  
16 Despite being informed of such effect on plaintiff and other persons with physical disabilities due  
17 to the lack of accessible facilities, defendants, and each of them, knowingly and willfully refused  
18 to take any steps to rectify the situation and to provide full and equal access for plaintiffs and  
19 other persons with physical disabilities to the motel. Said defendants, and each of them, have  
20 continued such practices, in conscious disregard for the rights of plaintiffs and other persons with  
21 physical disabilities, up to the date of filing of this complaint, and continuing thereon. Defendants  
22 had further actual knowledge of the architectural barriers referred to herein by virtue of the  
23 demand letter addressed to the defendants and served concurrently with the summons and  
24 complaint. Said conduct, with knowledge of the effect it was and is having on plaintiffs and other  
25 persons with physical disabilities, constitutes despicable conduct in conscious disregard of the  
26 rights and safety of plaintiffs and of other similarly situated persons, justifying the imposition of  
27 treble damages per Civil Code §§52 and 54.3.

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1 40. Plaintiff LES JANKEY and plaintiff DREES, on behalf of its membership and the  
 2 disability community which it serves, consisting of persons with disabilities, would, could and  
 3 will return to the subject public accommodation when it is made accessible to persons with  
 4 disabilities.

5 **I. FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A PUBLIC**  
 6 **ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH**  
 7 **DISABILITIES ACT OF 1990 (42 U.S.C. §12101, *et seq.*)**

(On behalf of Plaintiffs LES JANKEY and DISABILITY RIGHTS ENFORCEMENT,  
 7 EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a California public benefit  
 8 corporation and Against Defendants HENRY KAO-CHUN YANG TRUSTEE of the  
 9 CHUNG LANG YANG IRREVOCABLE TRUST; BALWANTSINH D. THAKOT, and  
 KIRANSHINH B. THAKOR, individuals dba GEARY PARKWAY MOTEL, inclusive)  
 (42 U.S.C. §12101, *et seq.*)

10 41. Plaintiffs plead and incorporate by reference, as if fully set forth again herein, the  
 11 allegations contained in paragraphs 1 through 40 of this complaint.

12 42. Pursuant to law, in 1990, the United States Congress made findings per 42 U.S.C.  
 13 §12101 regarding persons with physical disabilities, finding that laws were needed to more fully  
 14 protect:

15 some 43 million Americans with one or more physical or mental  
 16 disabilities; [that] historically society has tended to isolate and  
 17 segregate individuals with disabilities; [that] such forms of  
 18 discrimination against individuals with disabilities continue to be a  
 19 serious and pervasive social problem; [that] the nation's proper  
 20 goals regarding individuals with disabilities are to assure equality of  
 21 opportunity, full participation, independent living and economic  
 22 self-sufficiency for such individuals; [and that] the continuing  
 23 existence of unfair and unnecessary discrimination and prejudice  
 24 denies people with disabilities the opportunity to compete on an  
 25 equal basis and to pursue those opportunities for which our free  
 26 society is justifiably famous.

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1 43. Congress stated as its purpose in passing the Americans with Disabilities Act of  
2 1990 (42 U.S.C. §12102):

3 It is the purpose of this act (1) to provide a clear and comprehensive  
4 national mandate for the elimination of discrimination against  
5 individuals with disabilities; (2) to provide clear, strong, consistent,  
6 enforceable standards addressing discrimination against individuals  
7 with disabilities; (3) to ensure that the Federal government plays a  
8 central role in enforcing the standards established in this act on  
behalf of individuals with disabilities; and (4) to invoke the sweep  
of Congressional authority, including the power to enforce the 14th  
Amendment and to regulate commerce, in order to address the  
major areas of discrimination faced day to day by people with  
disabilities.

9 44. As part of the Americans with Disabilities Act of 1990, Public Law 101-336  
10 (hereinafter the "ADA"), Congress passed "Title III - Public Accommodations and Services  
11 Operated by Private Entities" (Section 301 42 U.S.C. §12181, *et seq.*). Among the public  
12 accommodations identified for purposes of this title was:

13 (7) PUBLIC ACCOMMODATION - The following private  
14 entities are considered public accommodations for purposes of this  
title, if the operations of such entities affect commerce -

15 ---

16 (A) an inn, hotel, motel, or other place of lodging, except for an  
17 establishment located within a building that contains not more than five  
rooms for rent or hire and that is actually occupied by the proprietor of such  
establishment as the residence of such proprietor.

18 42 U.S.C. §12181(7)(A)

19 45. Pursuant to §302, 42 U.S.C. §12182, "No individual shall be discriminated against  
20 on the basis of disability in the full and equal enjoyment of the goods, services, facilities,  
21 privileges, advantages, or accommodations of any place of public accommodation by any person  
22 who owns, leases, or leases to, or operates a place of public accommodation".

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1           46.     The specific prohibitions against discrimination set forth in §302(b)(2)(a),  
 2 42 U.S.C. §12182(b)(2)(a) are:

3                   (I)     the imposition or application of eligibility criteria  
 4 that screen out or tend to screen out an individual with a disability  
 5 or any class of individuals with disabilities from fully and equally  
 6 enjoying any goods, services, facilities, privileges, advantages, or  
 accommodations, unless such criteria can be shown to be necessary  
 for the provision of the goods, services, facilities, privileges,  
 advantages, or accommodations being offered;

7                   (ii)    a failure to make reasonable modifications in  
 8 policies, practices, or procedures, when such modifications are  
 9 necessary to afford such goods, services, facilities, privileges,  
 10 advantages or accommodations to individuals with disabilities,  
 unless the entity can demonstrate that making such modifications  
 would fundamentally alter the nature of such goods, services,  
 facilities, privileges, advantages, or accommodations;

11                   (iii)   a failure to take such steps as may be necessary to  
 12 ensure that no individual with a disability is excluded, denied  
 13 services, segregated or otherwise treated differently than other  
 14 individuals because of the absence of auxiliary aids and services,  
 15 unless the entity can demonstrate that taking such steps would  
 fundamentally alter the nature of the good, service, facility,  
 privilege, advantage, or accommodation being offered or would  
 result in an undue burden;

16                   (iv)    a failure to remove architectural barriers, and  
 17 communication barriers that are structural in nature, in existing  
 facilities . . . where such removal is readily achievable; and

18                   (v)     where an entity can demonstrate that the removal of  
 19 a barrier under clause (iv) is not readily achievable, a failure to  
 20 make such goods, services, facilities, privileges, advantages or  
 accommodations available through alternative methods if such  
 methods are readily achievable.

21 The acts of defendants set forth herein were a violation of plaintiffs' rights under the ADA, Public  
 22 Law 101-336, and the regulations promulgated thereunder, 28 CFR Part 36, *et seq.* - Effective  
 23 January 31, 1993, the standards of the ADA were also incorporated into California Civil Code  
 24 §51, making available the damage remedies incorporated into Civil Code §51 and 52(a) and 54.3.

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1        47. The removal of the barriers complained of by plaintiffs as hereinabove alleged was  
2 at all times after January 26, 1992 "readily achievable" as to the subject building(s) of GEARY  
3 PARKWAY MOTEL pursuant to 42 U.S.C. §12182 (b)(2)(A)(i)-(iv). On information and belief,  
4 if the removal of all the barriers complained of herein together was not "readily achievable," the  
5 removal of each individual barrier complained of herein was "readily achievable." On  
6 information and belief, defendants' failure to remove said barriers was likewise due to  
7 discriminatory practices, procedures and eligibility criteria, as defined by 42 U.S.C. §12182  
8 (b)(2)(A)(i) and (ii).

9        48. Per 42 U.S.C. §12181 (9), the term "readily achievable" means "easily  
10 accomplishable and able to be carried out without much difficulty or expense." The statute  
11 defines relative "expense" in part in relation to the total financial resources of the entities  
12 involved. Plaintiffs allege that properly repairing, modifying, or altering each of the items that  
13 plaintiffs complain of herein were and are "readily achievable" by the defendants under the  
14 standards set forth under §301(9) of the Americans with Disabilities Act. Furthermore, if it was  
15 not "readily achievable" for defendants to remove each of such barriers, defendants have failed to  
16 make the required services available through alternative methods which were readily achievable.

17        49. On information and belief, construction work on, and modifications of, the subject  
18 building(s) of GEARY PARKWAY MOTEL occurred after the compliance date for the  
19 Americans with Disabilities Act, January 26, 1992, independently triggering access requirements  
20 under Title III of the ADA.

21        50. Pursuant to the Americans with Disabilities Act of 1990, 42 U.S.C. §12188, *et*  
22 *seq.*, plaintiffs are entitled to the remedies and procedures set forth in §204(a) of the Civil Rights  
23 Act of 1964, 42 U.S.C. 2000(a)-3(a), as plaintiffs are being subjected to discrimination on the  
24 basis of disability in violation of this title or have reasonable grounds for believing that plaintiffs  
25 are about to be subjected to discrimination in violation of §302. Plaintiffs are deterred from  
26 returning to or making use of the public facilities complained of herein so long as the premises  
27 and defendants' policies bar full and equal use by persons with physical disabilities.

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51. 42 U.S.C. 12188 (a)(1) states: "Nothing in this section shall require a person with a disability to engage in a futile gesture if such person has actual notice that a person or organization covered by this title does not intend to comply with its provisions". Pursuant to this section, plaintiff LES JANKEY has not attempted to return to defendants' premises since on or about April 17, 2008, but on information and belief, alleges that defendants have continued to violate the law and deny the rights of plaintiffs and of other persons with physical disabilities to access this public accommodation. Pursuant to 42 USC §12188(a)(2), "In cases of violations of §302(b)(2)(A)(iv) . . . injunctive relief shall include an order to alter facilities to make such facilities readily accessible to and usable by individuals with disabilities to the extent required by this title".

52. Plaintiffs seek relief pursuant to remedies set forth in §204(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000(a)-3(a)), and pursuant to federal regulations adopted to implement the Americans with Disabilities Act of 1990, including but not limited to an order granting injunctive relief and attorneys' fees. Plaintiffs will seek attorneys' fees conditioned upon being deemed to be the prevailing party.

Wherefore, plaintiffs pray for relief and damages as hereinafter stated.

**II. SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND EQUAL ACCESS IN VIOLATION OF CALIFORNIA CIVIL CODE §§54, 54.1 AND 54.3, ET SEQ.**  
 (On Behalf of Plaintiffs LES JANKEY and DISABILITY RIGHTS, ENFORCEMENT, EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a California public benefit corporation, and Against Defendants HENRY KAO-CHUN YANG TRUSTEE of the CHUNG LANG YANG IRREVOCABLE TRUST; BALWANTSINH D. THAKOT, and KIRANSHINH B. THAKOR, individuals dba GEARY PARKWAY MOTEL, inclusive)  
 (California Civil Code §§54, 54.1, 54.3, *et seq.*)

53. Plaintiffs replead and incorporate by reference as if fully set forth again herein, the allegations contained in paragraphs 1 through 52 of this complaint.

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1       54.     At all times relevant to this action, California Civil Code §54 has provided that  
 2 persons with physical disabilities are not to be discriminated against because of physical handicap  
 3 or disability. This section provides that:

4               (a) Individuals with disabilities . . . have the same rights as  
 5 the general public to full and free use of the streets, highways,  
 6 sidewalks, walkways, public buildings, medical facilities, including  
 7 hospitals, clinics, and physicians' offices, and other public places.

8       55.     California Civil Code §54.1 provides that persons with disabilities shall not be  
 9 denied full and equal access to places of public accommodation or facilities:

10              (a)(1) Individuals with disabilities shall be entitled to full  
 11 and equal access, as other members of the general public, to  
 12 accommodations, advantages, facilities, medical facilities, including  
 13 hospitals, clinics, and physicians' offices, and privileges of all  
 14 common carriers, airplanes, motor vehicles, railroad trains,  
 15 motorbuses, streetcars, boats, or any other public conveyances or  
 16 modes of transportation (whether private, public, franchised,  
 17 licensed, contracted, or otherwise provided), telephone facilities,  
 18 adoption agencies, private schools, hotels, lodging places, places of  
 19 public accommodation, amusement or resort, and other places to  
 20 which the general public is invited, subject only to the conditions  
 21 and limitations established by law, or state or federal regulation, and  
 22 applicable alike to all persons.

23              Civil Code §54.1(a)(1)

24       56.     California Civil Code §54.1 further provides that a violation of the Americans with  
 25 Disabilities Act of 1990 constitutes a violation of section 54.1:

26              (d) A violation of the right of an individual under the  
 27 Americans with Disabilities Act of 1990 (Public Law 101-336) also  
 28 constitutes a violation of this section, and nothing in this section  
 shall be construed to limit the access of any person in violation of  
 that act.

              Civil Code §54.1(d)

57.     Plaintiff LES JANKEY and the membership of plaintiff DREES are persons within  
 the meaning of Civil Code §54.1 whose rights have been infringed upon and violated by the  
 defendants, and each of them, as prescribed by Civil Code §§54 and 54.1. Each specific  
 architectural barrier which defendants knowingly and willfully fail and refuse to remove  
 constitutes a separate act in violation of Civil Code §§54 and 54.1. Plaintiffs have been and  
 continue to be denied full and equal access to defendants' GEARY PARKWAY MOTEL. As a

1 legal result, plaintiffs are entitled to seek damages pursuant to a court or jury determination, in  
2 accordance with California Civil Code §54.3(a) for each day on which they visited or have been  
3 deterred from visiting the GEARY PARKWAY MOTEL because of their knowledge and belief  
4 that the motel is inaccessible to persons with disabilities. California Civil Code §54.3(a)  
5 provides:

6 Any person or persons, firm or corporation, who denies or interferes  
7 with admittance to or enjoyment of the public facilities as specified  
8 in Sections 54 and 54.1 or otherwise interferes with the rights of an  
9 individual with a disability under Sections 54, 54.1 and 54.2 is  
10 liable for each offense for the actual damages and any amount as  
11 may be determined by a jury, or the court sitting without a jury, up  
12 to a maximum of three times the amount of actual damages but in  
13 no case less than . . . one thousand dollars (\$1,000) and . . .  
14 attorney's fees as may be determined by the court in addition  
15 thereto, suffered by any person denied any of the rights provided in  
16 Sections 54, 54.1 and 54.2.

17 Civil Code §54.3(a)

18 58. On or about March 15, 2008, March 16, 2008, March 17, 2008, March 19, 2008,  
19 March 26, 2008, April 16, 2008 and April 17, 2008, plaintiff LES JANKEY suffered violations of  
20 Civil Code §§54 and 54.1 in that plaintiff LES JANKEY was denied access to signage, parking,  
21 guest rooms and other public facilities as stated herein at the GEARY PARKWAY MOTEL and  
22 on the basis that plaintiff LES JANKEY was a person with physical disabilities.

23 59. As a result of the denial of equal access to defendants' facilities due to the acts and  
24 omissions of defendants, and each of them, in owning, operating and maintaining these subject  
25 public facilities, plaintiffs suffered violations of plaintiffs' civil rights, including but not limited to  
26 rights under Civil Code §§54, 54.1.

27 60. Further, plaintiff LES JANKEY suffered mental distress, mental suffering, mental  
28 anguish, which includes shame, humiliation, embarrassment, frustration, anger, disappointment  
and worry, all of which are expectedly and naturally associated with a denial of access to a person  
with physical disabilities, all to plaintiff's damages as hereinafter stated. Defendants' actions and  
omissions to act constituted discrimination against plaintiff on the sole basis that plaintiffs are  
persons or an entity that represents persons with physical disabilities and unable, because of the



1 architectural barriers created and maintained by the defendants in violation of the subject laws, to  
2 use the public facilities hereinabove described on a full and equal basis as other persons.

3 61. Plaintiffs have been damaged by defendants', and each of their, wrongful conduct  
4 and seeks the relief that is afforded by Civil Code §§54 and 54.1, 54.3 and 55 for violation of  
5 plaintiffs' rights as persons or an entity that represents persons with physical disabilities on or  
6 about March 15, 2008, March 16, 2008, March 17, 2008, March 19, 2008, March 26, 2008, April  
7 16, 2008 and April 17, 2008, and on a continuing basis since then, including statutory damages, a  
8 trebling of all of actual damages, general and special damages available pursuant to §54.3 of the  
9 Civil Code according to proof.

10 62. As a result of defendants', and each of their, acts and omissions in this regard,  
11 plaintiffs have been required to incur legal expenses and hire attorneys in order to enforce  
12 plaintiffs' rights and enforce the provisions of the law protecting access for persons with physical  
13 disabilities and prohibiting discrimination against persons with physical disabilities. Pursuant to  
14 the provisions of Civil Code §54.3 and §55, plaintiffs therefore will seek recovery in this lawsuit  
15 for all reasonable attorneys' fees and costs incurred if deemed the prevailing party. Additionally,  
16 plaintiffs' lawsuit is intended not only to obtain compensation for damages to plaintiffs, but also  
17 to compel the defendants to make their facilities accessible to all members of the public with  
18 disabilities, justifying public interest attorneys' fees, if deemed the prevailing party, pursuant to  
19 the provisions of §1021.5 of the Code of Civil Procedure.

20 Wherefore, plaintiffs pray for relief and damages as hereinafter stated.

21 **III. THIRD CAUSE OF ACTION FOR DENIAL OF ACCESSIBLE SANITARY**  
22 **FACILITIES IN VIOLATION OF HEALTH & SAFETY CODE §19955, ET. SEQ.**  
23 (On Behalf of Plaintiffs LES JANKEY and DISABILITY RIGHTS, ENFORCEMENT,  
24 EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a California public benefit  
25 corporation and Against Defendants HENRY KAO-CHUN YANG TRUSTEE of the  
26 CHUNG LANG YANG IRREVOCABLE TRUST; BALWANTSINH D. THAKOT, and  
27 KIRANSHINH B. THAKOR, individuals dba GEARY PARKWAY MOTEL, inclusive)  
28 (Health & Safety Code §19955, *et seq.*)

63. Plaintiffs replead and incorporate by reference, as if fully set forth again herein, the  
allegations contained in paragraphs 1 through 62 of this complaint.

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1       64.   Health & Safety Code §19955 provides in pertinent part:

2           The purpose of this part is to insure that public accommodations or  
3           facilities constructed in this state with private funds adhere to the  
4           provisions of Chapter 7 (commencing with Sec. 4450) of Division 5  
5           of Title 1 of the Government Code. For the purposes of this part  
6           “public accommodation or facilities” means a building, structure,  
7           facility, complex, or improved area which is used by the general  
8           public and shall include auditoriums, hospitals, theaters, restaurants,  
9           hotels, motels, stadiums, and convention centers. When sanitary  
10          facilities are made available for the public, clients or employees in  
11          such accommodations or facilities, they shall be made available for  
12          the handicapped.

13       65.   Health & Safety Code §19956, which appears in the same chapter as §19955,  
14       provides in pertinent part, “accommodations constructed in this state shall conform to the  
15       provisions of Chapter 7 (commencing with Sec. 4450) of Division 5 of Title 1 of the Government  
16       Code . . . .” Health & Safety Code §19956 was operative July 1, 1970, and is applicable to all  
17       public accommodations constructed or altered after that date. On information and belief, portions  
18       of the GEARY PARKWAY MOTEL and/or of the building(s) were constructed and/or altered  
19       after July 1, 1970, and substantial portions of the motel and/or the building(s) had alterations,  
20       structural repairs, and/or additions made to such public accommodations after July 1, 1970,  
21       thereby requiring said motel and/or building to be subject to the requirements of Part 5.5, §19955,  
22       *et seq.*, of the Health & Safety Code upon such alteration, structural repairs or additions per  
23       Health & Safety Code §19959.

24       66.   Pursuant to the authority delegated by Government Code §4450, *et seq.*, the State  
25       Architect promulgated regulations for the enforcement of these provisions. Effective July 1,  
26       1982, Title 24 of the California Building Standards Code adopted the California State Architect’s  
27       Regulations and these regulations must be complied with as to any alterations and/or  
28       modifications of GEARY PARKWAY MOTEL and/or the building(s) occurring after that date.  
29       Construction changes occurring prior to this date but after July 1, 1970 triggered access  
30       requirements pursuant to the “ASA” requirements, the American Standards Association  
31       Specifications, A117.1-1961. On information and belief, at the time of the construction and  
32       modification of said building, all buildings and facilities covered were required to conform to

1 each of the standards and specifications described in the American Standards Association  
2 Specifications and/or those contained in Title 24 of the California Building Standards Code.

3 67. Motels such as the GEARY PARKWAY MOTEL are "public accommodations or  
4 facilities" within the meaning of Health & Safety Code §19955, *et seq.*

5 68. As a result of the actions and failure to act of defendants, and as a result of the  
6 failure to provide proper and legally handicapped-accessible public facilities, plaintiffs were  
7 denied plaintiffs' rights to full and equal access to public facilities and suffered a loss of plaintiffs'  
8 civil rights and plaintiffs' rights as persons with physical disabilities to full and equal access to  
9 public facilities.

10 69. Attorneys' Fees -- As a result of defendants' acts and omissions in this regard,  
11 plaintiffs have been required to incur legal expenses and hire attorneys in order to enforce  
12 plaintiffs' civil rights and enforce provisions of the law protecting access for the persons with  
13 physical disabilities and prohibiting discrimination against the persons with physical disabilities,  
14 and to take such action both in plaintiffs' own interests and in order to enforce an important right  
15 affecting the public interest. Plaintiffs, therefore, seek in this lawsuit the recovery of all  
16 reasonable attorneys' fees incurred, pursuant to the provisions of the Code of Civil Procedure  
17 §1021.5. Plaintiffs additionally seek attorneys' fees pursuant to Health & Safety Code §19953  
18 and Civil Code §§54.3 and 55 and/or in the alternative, plaintiffs will seek attorneys' fees, costs  
19 and litigation expenses pursuant to §204(a) of the Civil Rights Act of 1964 (42 U.S.C. 200(a)-  
20 3(a)). Plaintiffs will seek attorneys' fees conditioned upon being deemed to be the prevailing  
21 party.

22 70. Plaintiffs seek injunctive relief for an order compelling defendants, and each of  
23 them, to make the subject place of public accommodation readily accessible to and usable by  
24 persons with disabilities.

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Wherefore, plaintiffs pray for damages and relief as hereinafter stated.

**IV. FOURTH CAUSE OF ACTION FOR DENIAL OF ACCESS TO FULL AND EQUAL ACCOMMODATIONS, ADVANTAGES, FACILITIES, PRIVILEGES AND/OR SERVICES IN VIOLATION OF CALIFORNIA CIVIL CODE §51, ET SEQ. (THE UNRUH CIVIL RIGHTS ACT)**

(On Behalf of Plaintiffs LES JANKEY and DISABILITY RIGHTS, ENFORCEMENT, EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a California public benefit corporation, and Against Defendants HENRY KAO-CHUN YANG TRUSTEE of the CHUNG LANG YANG IRREVOCABLE TRUST; BALWANTSINH D. THAKOT, and KIRANSHINH B. THAKOR, individuals dba GEARY PARKWAY MOTEL, inclusive) (Civil Code §51, 51.5)

71. Plaintiffs replead and incorporate by reference, as if fully set forth again herein, the allegations contained in paragraphs 1 through 70 of this complaint.

72. Defendants' actions and omissions and failure to act as a reasonable and prudent public accommodation in identifying, removing and/or creating architectural barriers, policies, practices and/or procedures violates §51 of the Civil Code, the Unruh Civil Rights Act. The Unruh Act provides:

This section shall be known, and may be cited, as the Unruh Civil Rights Act.

All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, or disability are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

This section shall not be construed to confer any right or privilege on a person that is conditioned or limited by law or that is applicable alike to persons of every sex, color, race, religion, ancestry, national origin, or disability.

Nothing in this section shall be construed to require any construction, alteration, repair, structural or otherwise, or modification of any sort whatsoever, beyond that construction, alteration, repair, or modification that is otherwise required by other provisions of law, to any new or existing establishment, facility, building, improvement, or any other structure . . . nor shall anything in this section be construed to augment, restrict, or alter in any way the authority of the State Architect to require construction, alteration, repair, or modifications that the State Architect otherwise possesses pursuant to other . . . laws.

A violation of the right of any individual under the Americans with Disabilities Act of 1990 (Public Law 101-336) shall also constitute a violation of this section.

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1 As the Unruh Act incorporates violations of the Americans with Disabilities Act of 1990, the  
 2 "intent" of the defendants in not complying with barrier removal is not an issue. Hence, the  
 3 failure on the parts of defendants, as reasonable and prudent public accommodations, in acting or  
 4 failing to act to identify and remove barriers can be construed as a "negligent per se" act of  
 5 defendants, and each of them.

6 73. The acts and omissions of defendants stated herein are discriminatory in nature and  
 7 in violation of Civil Code §51.5:

8 No business establishment of any kind whatsoever shall  
 9 discriminate against, boycott or blacklist, refuse to buy from, sell to,  
 10 or trade with any person in this state because of the race, creed,  
 11 religion, color, national origin, sex, or disability of the person or of  
 the person's partners, members, stockholders, directors, officers,  
 managers, superintendents, agents, employees, business associates,  
 suppliers, or customers.

12 As used in this section, "person" includes any person, firm  
 13 association, organization, partnership, business trust, corporation,  
 limited liability company, or company.

14 Nothing in this section shall be construed to require any  
 15 construction, alteration, repair, structural or otherwise, or  
 16 modification of any sort whatsoever, beyond that construction,  
 17 alteration, repair or modification that is otherwise required by other  
 18 provisions of law, to any new or existing establishment, facility,  
 building, improvement, or any other structure . . . nor shall anything  
 19 in this section be construed to augment, restrict or alter in any way  
 the authority of the State Architect to require construction,  
 20 alteration, repair, or modifications that the State Architect otherwise  
 possesses pursuant to other laws.

21 74. Defendants' acts and omissions as specified have denied to plaintiffs full and equal  
 22 accommodations, advantages, facilities, privileges and services in a business establishment, on the  
 23 basis of physical disability, in violation of Civil Code §§51 and 51.5, the Unruh Civil Rights Act.  
 24 Furthermore, pursuant to the 1992 amendment to California Civil Code §51, "A violation of the  
 25 right of any individual under the Americans with Disabilities Act of 1990 (Public Law 101-336)  
 26 shall also constitute a violation of this section". Plaintiffs accordingly incorporate the entirety of  
 27 their above cause of action for violation of the Americans with Disabilities Act at §41, *et seq.*, as  
 28 if repled herein.

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75. As a legal result of the violation of plaintiff LES JANKEY's civil rights as hereinabove described, plaintiff LES JANKEY has suffered general and statutory damages.

76. Further, plaintiff LES JANKEY suffered emotional distress (all to plaintiff's damage according to proof, and incurred reasonable attorneys' fees and costs). Plaintiffs LES JANKEY and DREES are entitled to the rights and remedies of §52(a) of the Civil Code, including trebling of actual damages (defined by §52(h) of the Civil Code to mean "special and general damages"), as well as to reasonable attorneys' fees and costs, as is allowed by statute, according to proof if deemed to be the prevailing party.

**PRAYER:**

Plaintiffs pray that this court award damages and provide relief as follows:

**I. PRAYER FOR FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A PUBLIC ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990 (42 U.S.C. §12101, *et seq.*)**

(On Behalf of Plaintiffs LES JANKEY and DISABILITY RIGHTS ENFORCEMENT, EDUCATION, SERVICES:HELPING YOU HELP OTHERS, a California public benefit corporation, and Against Defendants HENRY KAO-CHUN YANG TRUSTEE of the CHUNG LANG YANG IRREVOCABLE TRUST; BALWANTSINH D. THAKOT, and KIRANSHINH B. THAKOR, individuals dba GEARY PARKWAY MOTEL, inclusive) (42 U.S.C. §12101, *et seq.*)

1. For injunctive relief, compelling defendants HENRY KAO-CHUN YANG TRUSTEE of the CHUNG LANG YANG IRREVOCABLE TRUST; BALWANTSINH D. THAKOT, and KIRANSHINH B. THAKOR, individuals dba GEARY PARKWAY MOTEL, inclusive, to make the GEARY PARKWAY MOTEL, located at 4750 Geary Street, San Francisco, California, readily accessible to and usable by individuals with disabilities, per 42 U.S.C §12181, *et seq.*, and to make reasonable modifications in policies, practice, eligibility criteria and procedures so as to afford full access to the goods, services, facilities, privileges, advantages and accommodations being offered.

2. For attorneys' fees, litigation expenses and costs of suit, if plaintiffs are deemed the prevailing party; and

3. For such other and further relief as the court may deem proper.

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1 **II. PRAYER FOR SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND**  
 2 **EQUAL ACCESS IN VIOLATION OF CALIFORNIA CIVIL CODE §§54, 54.1**  
 3 **AND 54.3, ET SEQ.**

4 (On Behalf of Plaintiffs LES JANKEY and DISABILITY RIGHTS ENFORCEMENT,  
 5 EDUCATION, SERVICES:HELPING YOU HELP OTHERS, a California public benefit  
 6 corporation, and Against Defendants HENRY KAO-CHUN YANG TRUSTEE of the  
 7 CHUNG LANG YANG IRREVOCABLE TRUST; BALWANTSINH D. THAKOT, and  
 8 KIRANSHINH B. THAKOR, individuals dba GEARY PARKWAY MOTEL, inclusive)  
 9 (California Civil Code §§54, 54.1, 54.3, *et seq.*)

6 1. For injunctive relief, compelling defendants HENRY KAO-CHUN YANG  
 7 TRUSTEE of the CHUNG LANG YANG IRREVOCABLE TRUST; BALWANTSINH D.  
 8 THAKOT, and KIRANSHINH B. THAKOR, individuals dba GEARY PARKWAY MOTEL,  
 9 inclusive, to make the GEARY PARKWAY MOTEL, located at 4750 Geary Street, San  
 10 Francisco, California, readily accessible to and usable by individuals with disabilities, per state  
 11 law.

12 2. Statutory damages as afforded by Civil Code §54.3 for the date of incident and for  
 13 each occasion on which plaintiffs were deterred from returning to the subject public  
 14 accommodation.

15 3. Attorneys' fees pursuant to Civil Code §54.3 and §55 and Code of Civil Procedure  
 16 §1021.5, if plaintiffs are deemed the prevailing party;

17 4. Treble damages pursuant to Civil Code §54.3;

18 5. For all costs of suit;

19 6. Prejudgment interest pursuant to Civil Code §3291;

20 7. Such other and further relief as the court may deem just and proper.

21 **III. PRAYER FOR SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND**  
 22 **EQUAL ACCESS IN VIOLATION OF CALIFORNIA CIVIL CODE §§54, 54.1**  
 23 **AND 54.3, ET SEQ.**

24 (On Behalf of Plaintiff LES JANKEY, and Against Defendants HENRY KAO-CHUN  
 25 YANG TRUSTEE of the CHUNG LANG YANG IRREVOCABLE TRUST;  
 26 BALWANTSINH D. THAKOT, and KIRANSHINH B. THAKOR, individuals dba  
 27 GEARY PARKWAY MOTEL, inclusive),  
 28 (California Civil Code §§54, 54.1, 54.3, *et seq.*)

1. General and compensatory damages according to proof.

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**IV. PRAYER FOR THIRD CAUSE OF ACTION FOR DENIAL OF ACCESSIBLE  
SANITARY FACILITIES IN VIOLATION OF HEALTH & SAFETY CODE  
§19955, ET. SEQ.**

(On Behalf of Plaintiffs LES JANKEY and DISABILITY RIGHTS ENFORCEMENT, EDUCATION, SERVICES:HELPING YOU HELP OTHERS, a California public benefit corporation, and Against Defendants HENRY KAO-CHUN YANG TRUSTEE of the CHUNG LANG YANG IRREVOCABLE TRUST; BALWANTSINH D. THAKOT, and KIRANSHINH B. THAKOR, individuals dba GEARY PARKWAY MOTEL, inclusive) (Health & Safety code §19955, *et seq.*)

1. For injunctive relief, compelling defendants HENRY KAO-CHUN YANG TRUSTEE of the CHUNG LANG YANG IRREVOCABLE TRUST; BALWANTSINH D. THAKOT, and KIRANSHINH B. THAKOR, individuals dba GEARY PARKWAY MOTEL, inclusive, to make the GEARY PARKWAY MOTEL, located at 4750 Geary Street, San Francisco, California, readily accessible to and usable by individuals with disabilities, per state law.

2. For attorneys' fees pursuant to Code of Civil Procedure §1021.5, Civil Code §55, and/or, alternatively, Health & Safety Code §19953, if plaintiffs are deemed the prevailing party;

3. For all costs of suit;

4. For prejudgment interest pursuant to Civil Code §3291;

5. Such other and further relief as the court may deem just and proper.

**V. PRAYER FOR FOURTH CAUSE OF ACTION FOR DENIAL OF ACCESS TO  
FULL AND EQUAL ACCOMMODATIONS, ADVANTAGES, FACILITIES,  
PRIVILEGES AND/OR SERVICES IN VIOLATION OF CALIFORNIA CIVIL  
CODE §51, ET SEQ. (THE UNRUH CIVIL RIGHTS ACT)**

(On Behalf of Plaintiffs LES JANKEY and DISABILITY RIGHTS ENFORCEMENT, EDUCATION, SERVICES:HELPING YOU HELP OTHERS, a California public benefit corporation and Against Defendants HENRY KAO-CHUN YANG TRUSTEE of the CHUNG LANG YANG IRREVOCABLE TRUST; BALWANTSINH D. THAKOT, and KIRANSHINH B. THAKOR, individuals dba GEARY PARKWAY MOTEL, inclusive) (California Civil Code §§51, 51.5, *et seq.*)

1. All statutory damages as afforded by Civil Code §52(a) for the date of incident and for each occasion on which plaintiffs were deterred from returning to the subject public accommodation;

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2. Attorneys' fees pursuant to Civil Code §52(a), if plaintiffs are deemed the prevailing party;

3. Treble damages pursuant to Civil Code §52(a);

4. For all costs of suit;

5. Prejudgment interest pursuant to Civil Code §3291; and

6. Such other and further relief as the court may deem just and proper.

**VI. PRAYER FOR FOURTH CAUSE OF ACTION FOR DENIAL OF ACCESS TO FULL AND EQUAL ACCOMMODATIONS, ADVANTAGES, FACILITIES, PRIVILEGES AND/OR SERVICES IN VIOLATION OF CALIFORNIA CIVIL CODE §51, ET SEQ. (THE UNRUH CIVIL RIGHTS ACT)**

(On Behalf of Plaintiff LES JANKEY, and Against Defendants HENRY KAO-CHUN YANG TRUSTEE of the CHUNG LANG YANG IRREVOCABLE TRUST; BALWANTSINH D. THAKOT, and KIRANSHINH B. THAKOR, individuals dba GEARY PARKWAY MOTEL, inclusive)  
(California Civil Code §§51, 51.5, et seq.)

1. General and compensatory damages to plaintiff LES JANKEY according to proof.

Dated: 4/30/08, 2008

THOMAS E. FRANKOVICH  
A PROFESSIONAL LAW CORPORATION

By: 

THOMAS E. FRANKOVICH  
Attorneys for Plaintiffs LES JANKEY and DISABILITY RIGHTS  
ENFORCEMENT, EDUCATION, SERVICES:HELPING YOU  
HELP OTHERS, a California public benefit corporation

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a jury for all claims for which a jury is permitted.

Dated: 4/30/08, 2008

THOMAS E. FRANKOVICH  
A PROFESSIONAL LAW CORPORATION

By: 

THOMAS E. FRANKOVICH  
Attorneys for Plaintiffs LES JANKEY and DISABILITY RIGHTS  
ENFORCEMENT, EDUCATION, SERVICES:HELPING YOU  
HELP OTHERS, a California public benefit corporation

E-filing

## CIVIL COVER SHEET

PJH

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO.)

## I.(a) PLAINTIFFS

LES JANKEY, an individual; and DISABILITY RIGHTS, ENFORCEMENT, EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a California public benefit corporation,

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF  
(EXCEPT IN U.S. PLAINTIFF CASES)

Los Angeles County

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Thomas E. Frankovich, APLC  
2806 Van Ness Ave., S.F., CA 94109 (415) 674-8600

## DEFENDANTS

GEARY PARKWAY MOTEL; HENRY KAO-CHUN YANG TRUSTEE of the CHUNG LANG YANG IRREVOCABLE TRUST; BALWANTSINH D. THAKOT, and KIRANSHINH B. THAKOR, individuals dha GEARY PARKWAY MOTEL.  
COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

San Francisco County

ORIGINAL

## II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

☐ 1 U.S. Government Plaintiff

☐ 2 U.S. Government Defendant

☒ Federal Question  
(U.S. Government Not a Party)

☐ 4 Diversity  
(Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

Citizen of This State

PTF DEF  
☐ 1 ☐ 1

Incorporated or Principal Place of Business In This State

PTF DEF  
☐ 4 ☐ 4

Citizen of Another State

☐ 2 ☐ 2

Incorporated and Principal Place of Business In Another State

☐ 5 ☐ 5

Citizen or Subject of a Foreign Country

☐ 3 ☐ 3

Foreign Nation

☐ 6 ☐ 6

## IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

☒ Original Proceeding

☐ Removed from State Court

☐ Remanded from Appellate Court

☐ Reinstated or Reopened

☐ Transferred from Another district (specify)

☐ Multidistrict Litigation

☐ Appeal to District Judge from Magistrate Judgment

## V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

## CONTRACT

- ☐ 110 Insurance  
☐ 120 Marine  
☐ 130 Miller Act  
☐ 140 Negotiable Instrument  
☐ 150 Recovery of Overpayment & Enforcement of Judgment  
☐ 151 Medicare Act  
☐ 152 Recovery of Defaulted Student Loans (Excl Veterans)  
☐ 153 Recovery of Overpayment of Veteran's Benefits  
☐ 160 Stockholders Suits  
☐ 190 Other Contract  
☐ 195 Contract Product Liability  
☐ 196 Franchise

## TORTS

## PERSONAL INJURY

- ☐ 310 Airplane  
☐ 315 Airplane Product Liability  
☐ 320 Assault Libel & Slander  
☐ 330 Federal Employers Liability  
☐ 340 Marine  
☐ 345 Marine Product Liability  
☐ 350 Motor Vehicle  
☐ 355 Motor Vehicle Product Liability  
☐ 360 Other Personal Injury

## PERSONAL INJURY

- ☐ 362 Personal Injury Med Malpractice  
☐ 365 Personal Injury Product Liability  
☐ 368 Asbestos Personal Injury Product Liability

## PERSONAL PROPERTY

- ☐ 370 Other Fraud  
☐ 371 Truth In Lending  
☐ 380 Other Personal Property Damage  
☐ 385 Property Damage Product Liability

## FORFEITURE/PENALTY

- ☐ 610 Agriculture  
☐ 620 Other Food & Drug  
☐ 625 Drug Related Seizure of Property 21 USC 881  
☐ 630 Liquor Laws  
☐ 640 RR & Truck  
☐ 650 Airline Regs  
☐ 660 Occupational Safety/Health  
☐ 690 Other

## LABOR

- ☐ 710 Fair Labor Standards Act  
☐ 720 Labor/Mgmt Relations  
☐ 730 Labor/Mgmt Reporting & Disclosure Act  
☐ 740 Railway Labor Act  
☐ 790 Other Labor Litigation  
☐ 791 Empl.Ret. Inc. Security Act

## BANKRUPTCY

- ☐ 422 Appeal 28 USC 158  
☐ 423 Withdrawal 28 USC 157

## PROPERTY RIGHTS

- ☐ 820 Copyrights  
☐ 830 Patent  
☐ 840 Trademark

## SOCIAL SECURITY

- ☐ 861 HIA (1395ff)  
☐ 862 Black Lung (923)  
☐ 863 DIWC/DIWW (405(g))  
☐ 864 SSID Title XVI  
☐ 865 RSI (405(g))

## FEDERAL TAX SUITS

- ☐ 870 Taxes (US Plaintiff or Defendant)  
☐ 871 IRS - Third Party 26 USC 7609

## OTHER STATUTES

- ☐ 400 State Reapportionment  
☐ 410 Antitrust  
☐ 430 Banks and Banking  
☐ 450 Commerce/ICC Rates/etc.  
☐ 460 Deportation  
☐ 470 Racketeer Influenced and Corrupt Organizations  
☐ 480 Consumer Credit  
☐ 490 Cable/Satellite TV  
☐ 810 Selective Service  
☐ 850 Securities/Commodities/Exchange  
☐ 875 Customer Challenge 12 USC 3410  
☐ 891 Agricultural Acts  
☐ 892 Economic Stabilization Act  
☐ 893 Environmental Matters  
☐ 894 Energy Allocation Act  
☐ 895 Freedom of Information Act  
☐ 900 Appeal of Fee Determination Under Equal Access to Justice  
☐ 950 Constitutionality of State Statutes  
☐ 890 Other Statutory Actions

## REAL PROPERTY

- ☐ 210 Land Condemnation  
☐ 220 Foreclosure  
☐ 230 Rent Lease & Ejectment  
☐ 240 Torts to Land  
☐ 245 Tort Product Liability  
☐ 290 All Other Real Property

## CIVIL RIGHTS

- ☐ 441 Voting  
☐ 442 Employment  
☐ 443 Housing  
☐ 444 Welfare  
☐ 440 Other Civil Rights  
☐ 445 Amer w/ disab - Empl  
☐ 446 Amer w/ disab - Other

## PRISONER PETITIONS

- ☐ 510 Motion to Vacate Sentence Habeas Corpus:  
☐ 530 General  
☐ 535 Death Penalty  
☐ 540 Mandamus & Other  
☐ 550 Civil Rights  
☐ 555 Prison Condition

## VI. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.)

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION DEMAND \$ ☐ CHECK YES only if demanded in complaint:  
UNDER F.R.C.P. 23 JURY DEMAND: ☒ YES ☐ NO

VIII. RELATED CASE(S) PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE  
IF ANY "NOTICE OF RELATED CASE".

## IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2)

(PLACE AND "X" IN ONE BOX ONLY)

☐ SAN FRANCISCO/OAKLAND

☐ SAN JOSE

DATE

4/30/08

SIGNATURE OF ATTORNEY OF RECORD

*[Signature]*

DUPLICATE

Court Name: U.S. District Court, NDCA  
Division: 3  
Receipt Number: 34611019128  
Cashier ID: bucklem  
Transaction Date: 05/14/2008  
Payer Name: thomas e. frankovich

CIVIL FILING FEE

For: les jankey  
Case/Party: D-CAN-3-08-CV-002466-001  
Amount: \$350.00

CHECK

Check/Money Order Num: 10573  
Amt Tendered: \$350.00

Total Due: \$350.00  
Total Tendered: \$350.00  
Change Amt: \$0.00

pjh

Checks and drafts are accepted  
subject to collections and full  
debit will only be given when the  
check or draft has been accepted by  
the financial institution on which  
it was drawn.